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Dolores Ranger District  
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USDI Bureau of Land Management  
San Juan Center  
Dolores Field Office  
<http://www.co.blm.gov>

**File Code:** (BLM) 4700

**Date:** August 1st, 2011

**DECISION RECORD**  
**For the**  
**Spring Creek Basin HMA 2011 Wild Horse Gather Plan**  
**Environmental Assessment # DOI-BLM-CO-S010-2011-0062EA**

**INTRODUCTION**

The Spring Creek Basin Herd Management Area (HMA) comprises about 21,932 acres of public and other land. The HMA is located in San Miguel and Dolores Counties, about 45 miles northeast of Dove Creek, CO and 33 miles southwest of Norwood, CO. off San Miguel County road 19Q. The Spring Creek Basin Wild Horse Herd Management Area (HMA) has an established appropriate management level (AML) that is expressed as a range, from a maximum of 65 adult horses to a minimum of 35 adult horses, where the upper number represents the maximum population which best sustains a thriving natural ecological balance and avoids a deterioration of the range. The AML was established in the 1994 Spring Creek Basin Wild Horse Herd Management Area Plan Decision in 2005 based on Environmental Assessment *CO-800-2005-027EA* that reduced livestock use (Finding of No Significant Impact/Decision Record for Grazing Permit Renewal in the Spring Creek Grazing Allotment) and continued the AML for wild horse use (Finding of No Significant Impact/Decision Record for Wild Horse Appropriate Management Level in the Spring Creek Basin Herd Management Area).

The weekend of May 14-15, 2011, 78 horses were counted within the herd management area (HMA) by volunteers with the Disappointment Wild Bunch partners. The volunteers estimated at least 10 foals with a possibility of another 3 mares yet to give birth resulting in approximately 88-91 animals in the HMA. Vegetation trend monitoring data confirms that the condition of ecological sites within the HMA continues to be static or declining and supports the removal of excess wild horses as necessary for Bureau of Land Management (BLM) to manage the resources in the HMA to achieve a thriving natural ecological balance.

The BLM has prepared environmental assessment (EA) DOI-BLM-CO-S010-2011-0062EA to analyze the need for, and the anticipated impacts of, the proposed action to helicopter drive trap and capture up to 60 wild horses in order to remove 50 excess animals, apply the contraceptive porcine zona pellucida (PZP) with annual boosters over the next five years to mares in the HMA, and establish a 60/40% male-female sex ratio. Two alternatives to the proposed action were also analyzed. The EA was tiered to CO-800-2005-027EA, which presents a more in-depth examination of vegetation monitoring and rangeland health data in the HMA. In addition to these two EAs, I also considered all written comments received through July 11, 2011, as well as

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oral statements given at a public hearing held on April 25, 2011 concerning the use of helicopters and motor vehicles for wild horse gathering.

### **Compliance/Conformance**

I have determined that the Proposed Action (Alternative 1) is in conformance with the San Juan/San Miguel Resource Management Plan, approved in September 1985 with the following objectives for the management of wild horses:

- The Spring Creek Basin herd, to range in numbers between a low of 35 and a high of 65 animals, would be compatible with multiple use objectives for the area and would not inflict significant, adverse effects on the vegetation, soils and water resources once a herd management plan was in place.
- Livestock and Wild Horse emphasis: Maintain forage in fair condition with an upward trend.
- Soils and water emphasis: Manage the Spring Creek Basin wild horse herd to limit utilization of key forage species, thus improving vegetative conditions, reducing erosion, and maintaining watershed conditions.

The 1994 Herd Management Area Plan established desired plant conditions for each of the ecological sites in the HMA. The 2003 rangeland health assessment determined that these sites were in fair and poor conditions not meeting the Colorado Land Health Standards. Based on vegetation frequency trend monitoring studies, trend in key forage species by ecological site continue to show a static or declining ecological condition.

The Proposed Action is consistent with the plans and policies of neighboring local, county, and state governments to the greatest extent practical. The Proposed Action will not violate any federal, state, or local law, or requirement imposed for the protection of the environment.

The Proposed Action is in conformance with all applicable regulations at 43 Code of Federal Regulations (CFR)§ 4700 and policies, as well with the 1971 Wild Free Roaming Horses and Burros Act. More specifically, this action is designed to remove excess wild horses consistent with the following regulation:

43 CFR § 4720.1: *“Upon examination of current information and a determination that an excess of wild horses or burros exists, the authorized officer shall remove the excess animals immediately...”*

### **AUTHORITIES**

The proposed gather and removal of excess wild horses within the HMA complies with Public Law 92-125, the Wild Free Roaming Horses and Burros Act of 1971, as amended by the Federal Land Policy and Management Act (FLPMA); and Public Law 95-514, the Public Rangelands Improvement Act of 1978 (PRIA). P.L. 92-125, as amended, which require the BLM to protect, manage and control wild horse (and burro) populations on public lands.

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## DECISION

Based on the Spring Creek Basin HMA 2011 Wild Horse Gather Plan EA # DOI-BLM-CO-S010-2011-0062 and the attached Finding of No Significant Impact (FONSI), it is my decision to implement the Proposed Action (Alternative 1).

This Decision constitutes my final decision to gather and remove excess horses from within the HMA and remove wild horses from non-HMA areas to which wild horses have moved, to implement fertility control and sex ratio adjustments, and to manage for a thriving natural ecological balance. Pursuant to 43 CFR 4770.3(c), this decision is effective immediately and the gather is approved to begin on or about September 15, 2011. Title 43 CFR 4770.3(c) provides that:

“...the authorized officer may provide that decisions to remove wild horses or burros from public or private lands where removal is required by applicable law or is necessary to preserve or maintain a thriving ecological balance and multiple use relationship shall be effective upon issuance or on a date established in the decision.”

I have made this decision effective immediately because a delay in action would have a direct negative impact on plant communities relied upon by wild horses, wildlife, and livestock and, in turn, would consequently negatively affect the quality of the habitat used by these animal species. Failure to timely implement the Proposed Action would lead to continued loss of the more desirable forage species.

***Proposed Action:*** The Proposed Action would gather about 60 and remove approximately 50 excess wild horses from within and outside (if necessary) the Spring Creek Basin (HMA), beginning in mid-September, 2011. The post-gather population would approximate the lower AML of 35 adult horses and five current year foals.

Released mares would be given a primer dose of Porcine Zona Pellucida (PZP) immunocontraceptive vaccine to control fertility. This would be followed up in the field with a remotely administered booster dose prior to the end of March, 2012. In 2012 and through 2016, approximately 10 additional mares would be darted in the field by BLM and volunteers with both a primer and booster dose of liquid PZP (for mares not previously treated) or only a booster dose (for mares previously treated) during January, February or March using Standard Operating Procedures for fertility control (Appendix B).

The Proposed Action was developed to achieve the established AML, remove excess wild horses from the range, prevent further deterioration to the range, and ensure the long-term health of wild horses within the HMA to achieve a thriving natural ecological balance. Fertility control treatments and modification of sex ratios of released animals would slow population growth and could increase the time period before another gather is required.

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Animals captured within the HMA would be removed using a selective removal strategy. Any horses gathered from outside the HMA would be removed and not relocated in the HMA. Selective removal criteria for the HMA include: (1) First Priority: Age Class - Four Years and Younger; (2) Second Priority: Age Class - Eleven to Nineteen Years Old; (3) Third Priority: Age Class Five to ten years old. Up to 10 of the captured wild horses would be released; of these, about 4 would be mares and about 6 would be studs.

### **Alternatives Considered but not Selected**

In addition to the selected alternative, the EA evaluated and analyzed two other alternatives:

1. Alternative 2 would be similar to the Proposed Action except that the 22-month PZP would be administered at the holding corrals to any mares returned to the HMA. This involves two injections in the chute; a liquid dose of the PZP and a pelleted, time-released dose that is administered via a jab stick. This would be the only contraceptive administered in the HMA.
2. Under Alternative 3, the No Action Alternative, no gather would occur and no additional management actions would be undertaken to control the size of the wild horse population at this time.

The EA also lists three additional alternatives that were identified by the BLM or by the public through scoping comments, and were considered by the BLM, but were eliminated from detailed analysis for reasons provided in the EA.

### **RATIONALE**

The decision to select the Proposed Action (Alternative 1) is based on the following rationale:

1. This decision is based on a Finding of No Significant Impact (FONSI) for the Proposed Action dated August 1st, 2011.
2. This decision is in accordance with BLM policy, 43 CFR 4700 and the Wild Free-Roaming Horses and Burros Act of 1971.
3. This decision conforms to the San Juan/San Miguel Record of Decision and Approved Resource Management Plan (SJ/SM RMP) dated September, 1985, the Spring Creek Basin Wild Horse Herd Area Plan (HMAP) dated October 10, 1994 and the Finding of No Significant Impact/Decision Record for Wild Horse Appropriate Management Level in the Spring Creek Basin Herd Management Area dated May 27, 2005.
4. The Proposed Action best meets the Purpose and Need to remove excess wild horses in order to establish, preserve and maintain a thriving natural ecological balance and multiple-use relationship within the HMA in accordance with the Wild Free-Roaming Horses and Burros Act of 1971.

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5. Vegetation: Trend data collected in the summer of 2010, using nested frequency transect method, was compared to trend data collected since 1981. These data indicate persistent static or decline in perennial herbaceous ground cover and in the composition of desired native grasses and forbs in ecological sites within the HMA. In the short term, the Proposed Action would be expected to contribute to reversing this declining trend in the HMA that presently fails to meet the land health standards. For more detailed analysis regarding land health standards which are not being met see Appendix F; Resource Monitoring; Rangeland Health Assessment Attribute Ratings and Vegetation Condition Ratings; Special Status Species lists in the EA. The No Action Alternative would allow the continued decline of rangeland health and irreparable damage to vegetative, soil and riparian resources, affecting all other users of the resources. The No Action Alternative therefore would not ensure healthy rangelands that would allow for the management of a healthy, self-sustaining wild horse population; would adversely impact other uses of the public lands; and would not promote a thriving natural ecological balance.
  6. Excess Wild Horses: The current population of wild horses in the HMA is estimated to be 88-91. As defined in 16 USC § 1332(f), "excess animals" means wild free roaming horses or burros which must be removed from an area in order to preserve and maintain a thriving natural ecological balance and multiple-use relationship in that area. . Based on careful consideration of the analysis contained in the EA for each alternative, available information on population size, vegetation trend, herd genetics, and other resources in the HMA; and the analysis and management decisions of the SJ/SM RMP and the Spring Creek Basin Wild Horse Herd Management Area Plan, I have determined that excess horses exist within the HMA, and that removal of excess wild horses is necessary in order to manage the resources in the HMA to maintain a thriving natural ecological balance.

I selected implementation of the Proposed Action rather than Alternative 2 for the following reasons:

Given the past history concerning the use of PZP22 in the HMA and the limited success of using the PZP22 outside of the November – February window, the likelihood of reducing the growth rate of the herd is higher utilizing annual PZP. Population growth rates simulated for the PZP-22 fertility control alternative were 3-4% higher than with the PZP proposed action. Simulated gather frequency could be extended from 3-4 years under the PZP-22 alternative to 5-6 years under the proposed action.

The 2007 use of PZP-22 was less successful than anticipated. Ancillary information from the Little Book Cliffs herd using annual PZP indicates that the annual PZP is effective in preventing contraception, in slowing the herd growth rate, and in prolonging the number of years between gathers. The expected results from utilizing the annual PZP in the Spring Creek Basin HMA are based on the assumption that the mares can be accessed and darted in the field without the use of traps. Intensive monitoring as outlined in Appendix B (with the exception that census will be done on the ground by volunteers rather than aurally) will provide the data needed to evaluate

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the effectiveness of the annual PZP applications. Herd genetics will continue to be monitored through periodic DNA analysis.

I selected implementation of the Proposed Action rather than the No Action for the following reasons:

Under the No Action Alternative, AML would not be achieved within the HMA. There would be no active management to control the size of the population at this time, and wild horse populations would continue to increase at an average rate of 18-23% per year. A steady increase in the population size would result, and could cause long-term and potentially irreversible damage to rangeland resources. Without a gather and removal in 2011, the wild horse population in the HMA would be expected to exceed 180 head within four years based on modeling with population median annual growth rates of 18.9%.

The AML for the HMA represents the population range at which thriving natural ecological balance can be maintained and the level at which multiple uses of the public lands can occur without deterioration of the rangeland. Allowing the wild horse population to increase even further in excess of AML would result in greater competition for limited water and forage resources among horses and with other resource users.

Therefore, after careful consideration of all the aforementioned information and relevant factors, I have determined an overpopulation of wild horses currently exists and that action is necessary to remove all the excess wild horses from areas within and immediately adjacent to the HMA, in order to protect land resources from the deterioration associated with overpopulation. This action is also needed to conform to the applicable land use planning decisions, and to maintain a thriving natural ecological balance and multiple use relationship in the area.

## **CONSULTATION AND COORDINATION**

Coordination with State and Federal wildlife agencies was conducted throughout this process regarding potential threatened and endangered species and special status species. No formal consultation was required or conducted with the U.S. Fish and Wildlife Service as there are no known threatened or endangered populations within the HMA that would be impacted by gather operations.

## **PUBLIC INVOLVEMENT**

The BLM issued a news release on the availability of the preliminary EA for the Spring Creek Basin HMA 2011 Wild Horse Gather on June 10, 2011. The document was made available on the BLM web site at <http://www.blm.gov/co/st/en/fo/sjplc.html>. The Dolores Public Lands Office sent letters with copies of the document for public comment to approximately 88 individuals and groups. The web site and letters invited the public to submit comments on the EA until July 11, 2011.

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The BLM received approximately 15 responses with comments from the interested public in the form of emails and/or letters. In response to comments, the BLM made some minor changes in the final EA. A summary of comments by topic was included in Appendix G attached to the EA.

The BLM will provide the public with the opportunity to observe the Spring Creek Basin HMA 2011 wild horse gather operations using guidelines in Appendix C attached to the EA. Opportunities to observe horses in temporary holding at Cortez, Colorado and at the BLM wild horse facilities in Canon City are also available.

## **AUTHORITY**

The authority for this decision is contained in Section 3(b)(2) of the 1971 Free-Roaming Wild Horses and Burros Act, Section 302(b) of the Federal Land Policy and Management Act (FLPMA) of 1976, and 43 CFR Part 4700.

### **§4700.0-6 Policy**

(a) Wild horse and burros shall be managed as self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat; (b) Wild horses and burros shall be considered comparably with other resource values in the formulation of land use plans; (c) Management activities affecting wild horses and burros shall be undertaken with the goal of maintaining free-roaming behavior; (d) In administering these regulations, the authorized officer shall consult with Federal and State wildlife agencies and all other affected interests, to involve them in planning for and management of wild horses and burros on the public lands.

### **§4710.4 Constraints on Management**

Management of wild horses and burros shall be undertaken with the objective of limiting the animals' distribution to herd areas. Management shall be at the minimum level necessary to attain the objectives identified in approved land use plans and herd management area plans.

### **§4720.1 Removal of excess animals from public lands**

Upon examination of current information and a determination by the authorized officer that an excess of wild horses or burros exists, the authorized officer shall remove the excess animal immediately in the following order.

(a) Old, sick, or lame animals shall be destroyed in accordance with subpart 4730 of this title; (b) Additional excess animals for which an adoption demand by qualified individuals exists shall be humanely gathered and made available for private maintenance in accordance with subpart 4750 of this title; and (c) Remaining excess animals for which no adoption demand by qualified individuals exists shall be destroyed in accordance with subpart 4730 of this part.<sup>1</sup>

### **§4740.1 Use of Motor Vehicles or Air-craft**

(a) Motor vehicles and aircraft may be used by the authorized officer in all phases of the administration of the Act, except that no motor vehicle or aircraft, other than helicopters, shall be

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<sup>1</sup> The Bureau of Land Management is currently not implementing this portion of the CFRs. Future decisions regarding this option would not occur before public involvement and comment.

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used for the purpose of herding or chasing wild horses or burros for capture or destruction. All such use shall be conducted in a humane manner.

(b) Before using helicopters or motor vehicles in the management of wild horses or burros, the authorized officer shall conduct a public hearing in the area where such use is to be made.

#### §4770.3 Administrative Remedies

(a) Any person who is adversely affected by a decision of the authorized officer in the administration of these regulations may file an appeal. Appeals and petitions for stay of a decision of the authorized officer must be filed within 30 days of receipt of the decision in accordance with 43 CFR, part 4.

(c) Notwithstanding the provisions of paragraph (a) of §4.21 of this title, the authorized officer may provide that decisions to remove wild horses or burros from public or private lands in situations where removal is required by applicable law or is necessary to preserve or maintain a thriving natural ecological balance and multiple use relationship shall be effective upon issuance or on a date established in the decision.

#### **Authority for Dolores Public Lands Center Manager to make this decision:**

The Dolores Public Lands Office has delegated authority for both BLM and US Forest Service land use decisions under the legislative authority for Service First provided in the Omnibus Appropriations Act 2009, (Public law 111-8, March, 2009), SEC. 418 which extended the authorities from Section 330 of Public Law 106-291 concerning Service First authorities (114 Stat. 996), as amended by section 428 of Public Law 109-54 (119 Stat. 555-556) until September 30, 2011.

#### **Appeal Procedures**

Within 30 days of receipt of this wild horse decision, you have the right to appeal to the Board of Land Appeals, Office of the Secretary, in accordance with regulations at 43 CFR Part 4. If an appeal is taken, you must follow the procedures outlined in the attached "Information on Taking Appeals to the Board of Land Appeals." Please also provide this office with a copy of your Statement of Reasons. An appeal should be in writing and specify the reasons, clearly and concisely, as to why you think the decision is in error.

The appeal must be filed within 30 days following receipt of this decision. The appeal should state the reasons, clearly and concisely, why the appellant thinks the final BLM decision is in error. A petition for a stay of the decision pending final determination of the appeal by the administrative law judge may also be submitted during this same 30 day time period. The appeal, or the appeal and petition for stay, must be in writing and delivered in person, via the United States Postal Service mail system, or other common carrier, to the:

Dolores Public Lands Office  
29211 Highway 184  
Dolores, CO 81323.



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The person/party must also serve a copy of the appeal on any person named [43 CFR 4.421(h)] in the decision and the:

Office of the Solicitor  
755 Parfet St., Suite 151  
Lakewood, CO 80215.

The BLM does not accept appeals by facsimile or email.

In addition, within 30 days of receipt of this decision you have a right to file a petition for a stay (suspension) of the decision together with your appeal in accordance with the regulations at 43 CFR Part 4.21. The petition must be served upon the same parties identified in items 2, 3, and 4 of the attached Form 1842-1, titled "Information on Taking Appeals to the Board of Land Appeals." The appellant has the burden of proof to demonstrate that a stay should be granted. Should you wish to file a petition for a stay in accordance with 43 CFR Part 4.471(c), the appellant shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied;
2. The likelihood of the appellant's success on the merits;
3. The likelihood of immediate and irreparable harm if the stay is not granted; and
4. Whether the public interest favors granting the stay.

At the conclusion of any document that a party must serve, the party or its representative must sign a written statement certifying that service has been or will be made in accordance with the applicable rules and specifying the date and manner of such service (43 CFR 4.401 (c) (5)).

If you wish to discuss this decision, please contact Tom Rice at (970) 882-6843.

Sincerely,

Connie Clementson  
Field Manager, Dolores Public Lands Office

Attachments: August 1st, 2011 FONSI  
Decision Mailing List